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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. ~~460~~ 459

PACIFIC INSURANCE ASSOCIATES, LTD., a Guam corporation,
Petitioner,

vs.

FASHIONS, INCORPORATED, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

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Petitioner prays that a writ of certiorari issue t
review the judgment of the United States Court o
Appeals for the Ninth Circuit entered in the above
entitled cause on May 18, 1964.

OPINION BELOW

The opinion of the Court of Appeals, pursuant to its order was not reported. The Court's printed opinion is a part of Volume one (doc. 103) of the record heretofore submitted by the Clerk for the Court of Appeals and attached hereto in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was dated and entered May 18, 1964. A petition for rehearing was timely filed. It was denied by order dated and entered June 8, 1964. By order dated June 15, 1964, the time within which to petition for certiorari was extended to and including August 31, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1) and Rule 19(b) of the United States Supreme Court Rules.

QUESTIONS PRESENTED

1. Whether the Ninth Circuit's new standard of review for Guam cases pursuant to 28 U.S.C. §§ 1291, 1294, i.e., the "clear or manifest error" rule, creates a conflict with the decisions of other circuit courts of appeal.

2. Whether the application of this standard to Guam, which has adopted California statutory law, "has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned

such departure by a lower court as to call for an exercise of this court's power of supervision".

STATEMENT OF THE CASE

Jurisdiction of this action was vested in the District Court of Guam and on appeal in the United States Court of Appeals for the Ninth Circuit by Title 48, §§ 1294(4) and 1424, United States Code.

This action in unlawful detainer, pursuant to §§ 1159 through 1179 of the Guam Code of Civil Procedure, was commenced on January 16, 1958, in the Island Court of Guam. After judgment in favor of the plaintiff, the defendant appealed to the Appellate Division of the District Court, which court entered its judgment and opinion on February 19, 1960, granting defendant a retrial on the narrow issue of a partial eviction.

A trial on that issue was held by the Island Court of Guam and judgment was entered in favor of the plaintiff on the 6th day of May, 1960, the court finding as a matter of fact that there had been no partial eviction from the premises. This judgment was also appealed by defendant and on the 1st day of February 1963, the Appellate Division of the District Court again reversed the Island Court and entered judgment for the defendant. This judgment was appealed to the Court of Appeals for the Ninth Circuit.

On May 18, 1964, the Court of Appeals for the Ninth Circuit affirmed the decision of the District Court of Guam.

REASONS FOR GRANTING THE WRIT

1. DECISIONS OF THE COURTS OF APPEALS HAVE CREATED A CONFLICT AS TO THE STANDARD OF REVIEW APPLICABLE TO THE INSULAR POSSESSIONS.

In affirming the decision of the District Court of Guam, the Court of Appeals cited *Gumataotao v. Government of Guam*, 322 F.2d 580, 582 (1963), as authority for the rule that the District Court of Guam would not be reversed unless "clear and manifest error is shown".

The decision in *Gumataotao* had relied on *Bonet v. Texas Co. (P.R.), Inc.*, 308 U.S. 463, 60 S.Ct. 349 (1940) and *De Castro v. Board of Commissioners*, 322 U.S. 451, 64 S.Ct. 1121 (1944). In the *Bonet* case, the Supreme Court, in reversing a decree of the Court of Appeals which had reversed the Supreme Court of Puerto Rico on a point of local law, stated that "to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous". The reason for this rigorous standard of review was stated subsequently by the court in *De Castro, supra:*

> "Our opinion in the Sancho Bonet case was the culmination of efforts by this court, . . . to insure a review by the federal courts of decisions of the local courts of our insular possessions in matters of peculiarly local concern which should leave appropriate scope for the development by these courts of a system of law, which, differing from our own in its origins and principles, would nevertheless be suitable to local customs and needs." P. 454.

These two Supreme Court decisions were reasonable as applied to Puerto Rico, where the cases decided had arisen. The Act of April 12, 1900, c. 191, § 8 in part, 31 Stat. 79, continued in full force and effect the laws and ordinances of Puerto Rico then in force, except for laws inconsistent with military orders or U. S. law. And under Act April 12, 1900, c. 191, § 15, 31 Stat. 80, the legislative assembly of Puerto Rico had power to adopt or reject any of the provisions of the Spanish Civil Code. *Agenjo v. Agenjo,* C.C.C. Puerto Rico 1921, 276 F. 105. This policy was evinced in 48 U.S.C.A. 735, which was in effect at the time the Supreme Court handed down the *Bonet* and *De Castro* decisions. Since Puerto Rico was authorized by Congress to adopt Spanish law, and in fact did so in many of the areas of its laws, the Supreme Court's concern that the standard of review "should leave appropriate scope for the development by those courts of a system of law, which, differing from our own in its origins and principles, . . ." was reasonable.

The Third Circuit, however, does not apply the standard of review laid down by *Bonet* and *De Castro* in reviewing decisions of the Virgin Islands. In *Clen v. Jorgensen,* C.C.A. Virgin Islands 1920, 265 F. 120, the court determined that Act March 3, 1917, c. 171, § 2, 39 Stat. 1132, evinced a Congressional intent that appeals from the District Court of the Virgin Islands to the Third Circuit should be treated as had been the cases arising from the Islands by the courts of Denmark. The court reasoned that since the judgments of

the Island Courts had been reviewable de novo on the record by the Supreme Court of Denmark, then decisions by the District Court of the Virgin Islands should be similarly reviewed on appeal, both as to law and to fact, by the Circuit Court of Appeals. In *Callwood v. Callwood* (D.C. Virgin Islands 1954), 127 F. Supp. 179, the Third Circuit reaffirmed that appeals from the District Court of the Virgin Islands are tried by the Court of Appeals de novo and no findings of the District Court upon the evidence are binding upon the litigants upon appeal.

Both Puerto Rico and the Virgin Islands have Congressional authority to maintain aspects of local law in effect prior to their receiving territorial status. The reasoning of the *Bonet* and *De Castro* cases, i.e., that local law differing in origins and principles should be respected by reviewing only inescapably wrong decisions seems applicable to both territories. Yet decisions appealed from the District Court of Puerto Rico to the First Circuit obtain review only if the error is "clear or manifest" or "inescapably wrong" while an appeal from the District Court of the Virgin Islands is reviewable de novo.

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2. THE REASONS GIVEN BY THE SUPREME COURT FOR APPLYING THE "CLEAR AND MANIFEST" RULE TO INSULAR POSSESSIONS DO NOT EXIST IN GUAM.

The Ninth Circuit, as previously pointed out, has adopted the "clear or manifest error" standard in its review of decisions of the District Court of Guam.

The Ninth Circuit, by applying this standard to Guam, has created the irony of applying the standard where the reasons for the standard do not exist. While admittedly reasonable when applied to territories which have retained law "differing from our own in its origins and principles," it is anomalous when applied to a territory which has adopted virtually in toto the statutory law of one of our sovereign states.

The statutes under which the instant case arose, i.e., Chapter 4, Title 2 of the Guam Code of Civil Procedure, §§ 1159-1179 are in all material respects the same and in most instances copied verbatim from the California Unlawful Detainer Statutes in the California Code of Civil Procedure bearing the section numbers.

In enacting the Code of Civil Procedure, the legislature declared that all laws and rules theretofore in force in Guam, unless expressly continued in force by the code, were repealed and abrogated. Guam Code of Civil Procedure, § 18.

As early as 1933, the United States Navy had enacted "Civil Regulations" which were copied from the California Codes. These laws were, of course, suspended during the Japanese occupation but were revived in 1944 and reprinted in 1947. (*U. S. Gov. Printing Office Ed. 1947.*) The announced purpose in following California code law so closely was to provide a large body of court decisions and other legal literature available to aid in the interpretation of the various sections. *Forward, Guam Code of Civil Procedure.*

The Court of Appeals for the Ninth Circuit early held that the adoption from California of a code of laws designed to replace the original part-Spanish law warranted an inference that the codified rules were intended to have the same significance and scope as given in California. *United States v. Johnson,* 181 F.2d 577, 580 (9th Cir. 1950).

It thus becomes obvious that Guam does not have a system "differing from our own in its origins and principles". By laying down that standard, the Supreme Court intended to prevent the Courts of Appeals from "superimposing upon the Spanish law our common law preconceptions except so far as that law must yield to the express will of the United States". *De Castro, supra.* In other words, the court intended the insular possessions to maintain the system of law they had chosen. Guam has chosen to adopt virtually in toto the statutory law of California with its incidents and common law preconceptions. To deny the same standard of effective review given to other common law courts is to deny one of those incidents simply because Guam happens to be an insular possession.

Until the *Gumataotao* case, the same standards of review applied to all District Court appeals were applied to Guam appeals by the Ninth Circuit. The only reason given for the sudden change of review standards in the *Gumataotao* case is that Guam is an insular possession.

The application of the *Bonet* standard to all insular possessions ignores differences in governmental origins and processes instead of respecting them as the court intended. The conflict of decisions among the circuit courts points up the need of standards of review for insular possessions which would recognize the differences of dissimilar territories.

Adoption of a new "standard" by the Court of Appeals for the Ninth Circuit may well frustrate congressional intent as to the development of Guam stated as follows:

> ". . . given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." S.Rep. No. 2109 81st Cong., 2nd Sess. p. 4 (1950).

The "clear and manifest error" rule, if applied at all in Guam, should be applied at the trial court level. The Island Court tried the case twice and made written findings of fact. In reversing the Island Court, the Appellate Division of the District Court found no error in the findings and heard no evidence but ignored the Island Court findings. This was equivalent to a trial de novo without the benefit of testimony. Even by ordinary and usual standards of review there was no prejudicial error in the Island Court proceedings. If any reason at all exists for the new "clear

and manifest error" rule on review of Guam cases, it is at the "grass roots" level of the Island Court.

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3. CONCLUSION

The "clear or manifest error" standard should not be applied to the District Court of Guam. It denies Guam an incident of the laws it has chosen to adopt, i.e., effective review, and results in the application of a standard where the reason for the standard does not exist. To apply the "clear or manifest error" standard to all insular possessions creates a conflict with the decisions of other circuit courts of appeals and departs from the accepted and usual course of judicial procedure. Such a standard of review applied to Guam ignores differences in governmental origins and processes and defeats the clearly announced purpose of the Supreme Court in applying the "clear or manifest error" standard rather than implementing it. The petition should, therefore, be granted.

Dated, Oakland, California,
August 18, 1964.

Respectfully submitted,
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Attorneys for Petitioner.

(Appendix Follows)

Appendix

United States Court of Appeals
For the Ninth Circuit

Pacific Insurance Associates, Ltd., a Guam Corporation, Plaintiff-Appellant, vs. Fashions, Incorporated, a Corporation, Defendant-Appellee.	No. 18,621

[May 18, 1964]

Upon Appeal from the District Court of Guam

Before: ORR, MERRILL and DUNIWAY, Circuit Judges

MERRILL, Circuit Judge:

In this action for unlawful detainer, brought under §§ 1159-1179a of the Guam Code of Civil Procedure, judgment in favor of the plaintiff was rendered by the Island Court of Guam. Upon appeal that judgment was reversed by the Appellate Division of the District Court of Guam. This appeal followed.

We note at the outset that on matters of purely local law the courts of Guam "will not be reversed unless clear and manifest error is shown." Guma-

taotao v. Gov't. of Guam (9 Cir. 1963) 332 F.2d 580, 582.

Appellant seeks to terminate a sublease of business premises and dispossess the sublessee for failure to pay the prescribed rental and failure to insure the premises as required by the sublease. Appellee defends upon the ground that it has suffered partial eviction attributable to the appellant. The parties had joined in paving a parking area covering portions of the subleased premises and appellant's adjoining property from which appellee was substantially excluded by one of the appellant's other tenants, who, operating a used car business, utilized the parking area, with appellant's authorization, as a stand for his merchandise for a period of 17 months. The trial court found that there was no partial eviction since there were still some empty parking spaces available for the use of appellee's business customers and employees.

The district court reversed the trial court in this determination, holding that there had been a partial eviction. It concluded that the duty to pay the prescribed rental was suspended during the period of partial eviction, being superseded by an obligation in quantum meruit to pay the reasonable value of the remainder of the premises; that since rent for the period of partial eviction had already been paid in advance appellee therefore had a right to a subsequent allowance or set-off for the difference between that rent and the value of the quantum meruit obligation; that appellant's "right to relief through the summary

procedure of unlawful detainer was barred until such time as the allowance for the partial eviction was either agreed upon or adjudicated"; that accordingly appellant was not entitled to recover possession of the property in these proceedings.

Pursuant to order of the district court, appellee had paid sums into court as a condition to its right to remain in possession, pending final disposition of the case. Upon granting judgment for appellant the trial court had ordered this fund disbursed. The district court noted that the disbursement ordered by the trial court allowed the appellant an increase of about 80 per cent above the stipulated rental. The district court felt this to be inequitable, and that the appellant should receive from this sum no more than the unpaid rental as stipulated less costs and nominal damages for the partial eviction. It modified the order of disbursement accordingly.

Upon this phase of the case appellant advances two arguments.

1. It contends that the district court was not justified in reversing the Island court's determination that no partial eviction had been suffered.

The district court ruled that the fact that some parking spaces were available was not sufficient. It stated in its opinion:

> "We believe that, under the proper construction of paragraph 9 of the sublease, quoted above, in the light of the objectives sought by the sublease and the conduct of the parties, the defendant-appellant was entitled not merely to share in the

use of the parking lot for itself and its customers, but also to have the parking lot kept free from use other than for access to the buildings and for such parking as was normally incident to businesses carried on within the buildings, and not to have the parking lot itself used for carrying on business or as a space for dead storage or as a demonstration area."

2. Appellant also advances what it apparently regards as favorable equitable considerations. The district court obviously felt that to permit forfeiture under all of the circumstances would have been inequitable, and that this inequity was not outweighed by the matters relied on by appellant.

We find no manifest error in these determinations.

On an earlier appeal to the district court, that court had ordered the case remanded to the trial court for a determination of the issue of partial eviction. Partial eviction had been asserted by appellee in a counterclaim which the trial court had dismissed. In remanding the case to the trial court the district court recognized that dismissal had been proper since "in an unlawful detainer proceeding the defendant is not entitled to claim any affirmative relief, either by way of counterclaim or cross-complaint." Appellant asserts that the district court erred on the former appeal in remanding for determination of this issue which properly had been dismissed.

The district court, however, recognized that partial eviction, while not properly the subject of a counterclaim, would constitute matter of defense to the claim

of the plaintiffs and held that the assertion of the point in the counterclaim sufficiently served to plead it as a defense. This was not manifest error.

Affirmed.

The court has unanimously concluded that the inclusion of the foregoing opinion in the published law reports would serve no public purpose. It therefore directs the clerk that this opinion be not submitted for such publication.

United States Court of Appeals
For the Ninth Circuit

Pacific Insurance Associates, Ltd., a Guam Corporation, Plaintiff-Appellant, vs. Fashions, Incorporated, a Corporation, Defendant-Appellee.	No. 18,621

JUDGMENT

Appeal from the United States District Court for the District of Guam.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Guam and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered May 18, 1964.